



February 2, 2001

SENATE BILL No. 220

DIGEST OF SB 220 (Updated January 30, 2001 2:27 pm - DI je)

Citations Affected: IC 7.1-1; IC 24-4; noncode.

Synopsis: Regulates adult cabarets that hold licenses from the Indiana alcoholic beverage commission. Defines "adult cabaret". Defines "adult oriented establishment" as a sexual encounter center or an adult cabaret that does not hold a license from the Indiana alcoholic beverage commission. Creates the adult oriented establishment license. Provides for local control over licensing of adult oriented establishments. Prohibits operation of an adult oriented establishment without an adult oriented establishment license. Requires an employee of an adult oriented establishment to have an adult oriented establishment permit. Provides for fees and penalties. Imposes other requirements.

Effective: July 1, 2001.

Miller

January 9, 2001, read first time and referred to Committee on Rules and Legislative Procedure.

February 1, 2001, amended; reassigned to Committee on Governmental and Regulatory Affairs.

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SB 220—LS 6728/DI 13+



February 2, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 220

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-1-4 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2001]:

4 **Chapter 4. Adult Cabarets**

5 **Sec. 1. This chapter applies only to an adult cabaret that holds**
6 **a license under this title.**

7 **Sec. 2. As used in this chapter, "adult cabaret" means an**
8 **establishment that features as a principal use of its business and**
9 **source of income an entertainer, a member of the wait staff, a**
10 **bartender, or any other employee who exposes to public view of the**
11 **patrons within the establishment, at any time:**

12 **(1) the bare female breast below a point immediately above**
13 **the top of the areola; or**

14 **(2) human genitals, pubic regions, or buttocks, even if**
15 **partially covered by opaque material or completely covered**
16 **by translucent material, including:**

17 **(A) swimsuits;**

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- (B) lingerie; or
- (C) latex covering.

The term includes an establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

Sec. 3. As used in this chapter, "adult entertainment" means any exhibition of a:

- (1) live performance;
- (2) display; or
- (3) dance;

that has, as a significant or substantial part of the performance, any actual or simulated performance of specified sexual activities, exhibition and viewing of specified anatomical areas, or removal of articles of clothing or appearing unclothed during pantomime or modeling.

Sec. 4. As used in this chapter, "employee" means an individual who performs a service on the premises of an adult cabaret on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the individual is paid a salary, wage, or other compensation by the operator of the business. The term does not include an individual exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

Sec. 5. As used in this chapter, "entertainer" means an individual who provides entertainment within an adult cabaret, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or independent contractor.

Sec. 6. As used in this chapter, "operator" means any individual, partnership, or corporation operating, conducting, or maintaining an adult cabaret.

Sec. 7. As used in this chapter, "person" means an individual, a partnership, a limited liability entity, a firm, a corporation, or an association.

Sec. 8. As used in this chapter, "specified anatomical areas" means:

- (1) less than completely and opaquely covered human:
 - (A) genitals;
 - (B) pubic regions;
 - (C) buttocks; and
 - (D) female breasts below a point immediately above the top



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- 1 of the areola; and
- 2 (2) human male genitals in a discernibly turgid state, even if
- 3 completely opaquely covered.

4 Sec. 9. As used in this chapter, "specified sexual activities"

5 means:

- 6 (1) human genitals in a state of arousal;
- 7 (2) acts of human masturbation, sexual intercourse, or deviate
- 8 sexual conduct; or
- 9 (3) fondling or erotic touching of human genitals, pubic
- 10 regions, buttocks, or female breasts.

11 Sec. 10. (a) The public part of an adult cabaret may be open

12 only from noon to midnight.

13 (b) The public part of an adult cabaret shall be open to

14 inspection at all reasonable times by the commission.

15 (c) The operator shall maintain a register of all employees,

16 showing the:

- 17 (1) name;
- 18 (2) aliases used by the employee, including performance
- 19 names and stage names;
- 20 (3) home address;
- 21 (4) age;
- 22 (5) birth date;
- 23 (6) sex;
- 24 (7) height;
- 25 (8) weight;
- 26 (9) color of hair and eyes;
- 27 (10) telephone number;
- 28 (11) Social Security number;
- 29 (12) driver's license number;
- 30 (13) date of employment and termination; and
- 31 (14) duties;

32 of each employee and other information as may be required by the

33 commission. The information concerning an employee must be

34 maintained in the register on the premises for three (3) years after

35 the employee's termination. Information in the register of

36 employees is not public information, and the operator shall take

37 measures to maintain the privacy of the information.

38 (d) At all reasonable times, the operator shall make the register

39 of employees available for inspection by the commission

40 immediately upon demand.

41 (e) An act or omission by an employee constituting a violation

42 of this chapter is considered the act or omission of the operator if

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the act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct. The operator is punishable for an act or omission in the same manner as if the operator committed the act or caused the omission.

(f) An operator is responsible for the conduct of all employees while the employees are on the licensed premises, and any act or omission of any employee constituting a violation of this chapter is considered the act or omission of the operator for purposes of determining whether the operator's permit may be revoked, suspended, or renewed.

(g) An employee of an adult cabaret shall neither allow a minor to frequent the adult cabaret nor allow a minor to view adult entertainment at the adult cabaret.

(h) Every adult cabaret must be physically arranged so that the interior portions of the booths, cubicles, rooms, or stalls where adult entertainment is provided are visible from the common area of the premises. Visibility may not be blocked or obscured by doors, curtains, partitions, drapes, or any other obstruction.

(i) The operator of an adult cabaret shall provide that any room or area used to view live entertainment is readily accessible at all times and is continuously open to view in its entirety.

(j) A sign must be conspicuously displayed in the common area of the premises and must read as follows:

"This Adult Cabaret is Regulated by IC 7.1-1-4. Entertainers and employees are:

- (1) Not permitted to engage in any type of sexual conduct.
- (2) Not permitted to expose their sex organs.
- (3) Not permitted to demand or collect all or any part of a fee for entertainment before its completion.
- (4) Not permitted to appear in a state of full nudity."

(k) Not less than one (1) time per month, the operator shall permit the commission to inspect the entire licensed premises of the adult cabaret.

Sec. 11. (a) An operator, entertainer, or employee of an adult cabaret shall not permit:

- (1) sexual intercourse;
- (2) oral copulation;
- (3) anal copulation; or
- (4) any other contact stimulation of the genitalia;

to be performed. This includes the extension of an offer to perform,

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performance on a patron, performance by employees or patrons, or the allowance of a patron to perform.

(b) An operator, entertainer, or employee of an adult cabaret shall not encourage or permit any person upon the premises to touch, caress, or fondle the:

- (1) breasts;
- (2) buttocks;
- (3) anus; or
- (4) genitals;

of any operator, entertainer, or employee.

(c) An entertainer, employee, or customer shall not be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance.

(d) A performance by an entertainer or employee may only occur upon a stage that is:

- (1) at least eighteen (18) inches above the immediate floor level; and
- (2) removed at least six (6) feet from the next nearest entertainer, employee, and customer.

(e) An employee or entertainer, while on the premises of an adult cabaret, shall not:

- (1) engage in sexual intercourse;
- (2) engage in deviant sexual conduct;
- (3) appear in a state of nudity;
- (4) fondle the employee's or entertainer's own genitals; or
- (5) fondle the genitals of another.

(f) An adult cabaret shall not advertise that the license holder offers sexual stimulation, other than visual stimulation, or sexual gratification.

(g) An adult cabaret shall not display a sign or advertisement in public view that:

- (1) contains a source of illumination;
- (2) uses a picture, the silhouette, or any part of a silhouette of the:
 - (A) bare female breast;
 - (B) human genitals;
 - (C) human pubic regions; or
 - (D) human buttocks; or
- (3) exceeds the size and height restrictions determined by the commission.

Sec. 12. The commission may adopt rules under IC 4-22-2 and procedures to administer this chapter.



SECTION 2. IC 24-4-13 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2001]:

Chapter 13. Adult Oriented Establishment Licenses

Sec. 1. As used in this chapter, "adult cabaret" means an establishment that features as a principal use of its business and source of income an entertainer, a member of the wait staff, a bartender, or any other employee who exposes to public view of the patrons within the establishment, at any time:

(1) the bare female breast below a point immediately above the top of the areola; or

(2) human genitals, pubic regions, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including:

(A) swimsuits;

(B) lingerie; or

(C) latex covering.

The term includes an establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.

Sec. 2. As used in this chapter, "adult entertainment" means any exhibition of an adult oriented:

(1) motion picture that is found obscene under IC 35-49-2-1;

(2) live performance;

(3) display; or

(4) dance;

that has, as a significant or substantial part of the performance, any actual or simulated performance of specified sexual activities, exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed during pantomime or modeling, or any other personal service offered to customers.

Sec. 3. As used in this chapter, "adult oriented establishment" means:

(1) a sexual encounter center; or

(2) an adult cabaret that does not hold a license or permit under IC 7.1.

Sec. 4. As used in this chapter, "employee" means a person who performs any service on the premises of an adult oriented establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the person is paid a salary, wage, or other compensation by the operator of the

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business. The term does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

Sec. 5. As used in this chapter, "entertainer" means a person who provides entertainment within an adult oriented establishment, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or independent contractor.

Sec. 6. As used in this chapter, "law enforcement official" means the law enforcement agency responsible for enforcement of this chapter in a political subdivision as selected by the executive (as defined in IC 36-1-2-5) of the political subdivision having jurisdiction over the adult entertainment.

Sec. 7. As used in this chapter, "licensing authority" or "authority" means the licensing authority designated by the executive (as defined in IC 36-1-2-5) of the political subdivision having jurisdiction over the adult entertainment.

Sec. 8. As used in this chapter, "nudity" means the showing:

- (1) of the human male or female genitals or pubic area with less than a fully opaque covering;
- (2) of the female breast with less than a fully opaque covering of any part of the nipple; or
- (3) of the covered male genitals in a discernibly turgid state.

Sec. 9. As used in this chapter, "operator" means any person, partnership, or corporation operating, conducting, or maintaining an adult oriented establishment.

Sec. 10. As used in this chapter, "person" means an individual, a partnership, a limited liability entity, a firm, a corporation, or an association.

Sec. 11. As used in this chapter, "sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, or buttocks of a person for the purpose of arousing or gratifying the sexual desire of another person.

Sec. 12. As used in this chapter, "sexual encounter center" means a business or commercial enterprise that, as its primary business purpose, offers for any form of consideration a location for sexual conduct on the premises by individuals who have paid a fee for membership or for participation.

Sec. 13. As used in this chapter, "specified anatomical areas" means:

- (1) less than completely and opaquely covered:

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- 1 (A) human genitals;
- 2 (B) pubic regions;
- 3 (C) buttocks; and
- 4 (D) female breasts below a point immediately above the top
- 5 of the areola; and
- 6 (2) human male genitals in a discernibly turgid state, even if
- 7 completely opaquely covered.
- 8 Sec. 14. As used in this chapter, "specified criminal act" and
- 9 "specified criminal activities" refer to the following criminal
- 10 offenses:
- 11 (1) Rape under IC 35-42-4-1.
- 12 (2) Criminal deviate conduct under IC 35-42-4-2.
- 13 (3) Child molesting under IC 35-42-4-3.
- 14 (4) Child exploitation under IC 35-42-4-4.
- 15 (5) Possession of child pornography under IC 35-42-4-4.
- 16 (6) Vicarious sexual gratification under IC 35-42-4-5.
- 17 (7) Child solicitation under IC 35-42-4-6.
- 18 (8) Child seduction under IC 35-42-4-7.
- 19 (9) Sexual battery under IC 35-42-4-8.
- 20 (10) Sexual misconduct with a minor under IC 35-42-4-9.
- 21 Sec. 15. As used in this chapter, "specified services" means
- 22 private dances, private modeling, and any other live adult
- 23 entertainment.
- 24 Sec. 16. As used in this chapter, "specified sexual activities"
- 25 means:
- 26 (1) human genitals in a state of arousal;
- 27 (2) acts of human masturbation, sexual intercourse, or deviate
- 28 sexual conduct; or
- 29 (3) fondling or erotic touching of human genitals, pubic
- 30 regions, buttocks, or female breasts.
- 31 Sec. 17. (a) An adult oriented establishment must be licensed by
- 32 a licensing authority.
- 33 (b) A license may be issued only for one (1) adult oriented
- 34 establishment located at a fixed and certain place. A person who
- 35 operates more than one (1) adult oriented establishment must have
- 36 a license for each adult oriented establishment.
- 37 (c) A building, premises, structure, or other facility that
- 38 contains an adult oriented establishment may not contain any other
- 39 kind of adult oriented establishment.
- 40 (d) A license or interest in a license may not be transferred.
- 41 (e) An entertainer, employee, or operator shall not knowingly:
- 42 (1) work in or about; or



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(2) perform any service directly related to or at the request of the operation of;
an unlicensed adult oriented establishment.

(f) A license may not be issued by the authority unless the applicant certifies, by proof satisfactory to the authority, that the applicant has satisfied the rules, regulations, and provisions of the applicable zoning requirements of the political subdivision.

Sec. 18. (a) A person who desires a license shall make application to the licensing authority. A copy of the application shall be distributed promptly to the local law enforcement official.

(b) The application for a license must be on a form provided by the authority. An applicant for a license shall furnish the following information under oath:

(1) Name, including all aliases, and address of the applicant.

(2) Written proof that all individuals employed by the applicant are at least eighteen (18) years of age.

(3) The business, occupation, or employment of the applicant for five (5) years immediately preceding the date of the application.

(4) The adult oriented establishment or similar business license history of the applicant. The applicant shall include whether the applicant, in previously operating in any county, city, or state under a license, has had the license revoked or suspended, the reason for revocation or suspension, and the business activity or occupation subject to the suspension or revocation.

(5) Any conviction for a specified criminal act.

(6) The address of the adult oriented establishment to be operated by the applicant.

(7) If the applicant is:

(A) a corporation, the application shall specify:

(i) the name, address, and telephone number of the corporation;

(ii) the date and the state of incorporation;

(iii) the name and address of the registered agent for service of process of the corporation;

(iv) the names and addresses of the officers and directors of the corporation; and

(v) the names and addresses of any person holding at least fifty percent (50%) of the stock of the corporation;

(B) a partnership, the application shall specify:

(i) the name and address of the partnership; and



(ii) the name and address of all general partners of the partnership; or

(C) a limited partnership, the application shall specify the name and address of all general partners who have a controlling interest in the partnership.

(8) A statement by the applicant that the applicant is familiar with all laws and regulations governing the operation of an adult oriented establishment and is in compliance with them.

(c) Not later than ten (10) days after receiving the results of the investigation conducted by the authority or by a local law enforcement official for the authority, the authority shall notify the applicant that the application is granted, denied, or held for further investigation. Additional investigation may not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the authority shall advise the applicant in writing whether the application is granted or denied.

(d) Failure or refusal of the applicant to give any information relevant to the investigation of the application, the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, or the applicant's refusal to submit to or cooperate with any investigation required by this chapter constitutes an admission by the applicant that the applicant is ineligible for a license and is grounds for denial of the license by the authority.

Sec. 19. (a) To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

(1) If the applicant is an individual, the applicant:

(A) must be at least eighteen (18) years of age;

(B) must not have had a license revoked within five (5) years immediately preceding the date of the application;

(C) must not have been convicted of any violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) must not have been convicted of a specified criminal act for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses

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occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on disqualification of the applicant.

(2) If the applicant is a corporation:

(A) all officers, directors, and stockholders required to be named under this chapter must be at least eighteen (18) years of age;

(B) an officer, director, and stockholder required to be named under this chapter may not have had an adult oriented establishment license revoked within five (5) years immediately preceding the date of the application;

(C) an officer, director, or stockholder required to be named under this chapter may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and

(D) the applicant or officer, director, or stockholder required to be named by this chapter may not have a conviction for a specified criminal act for which:

(i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or

(iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed has no effect on disqualification of the applicant.

(3) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

(A) all persons having a financial interest in the partnership, joint venture, or other type of organization must be at least eighteen (18) years of age;

(B) all persons having a financial interest in the partnership, joint venture, or other type of organization may not have had a license revoked within five (5) years immediately preceding the date of the application;

(C) an applicant or person having a financial interest in the partnership, joint venture, or other type of organization may not have a conviction for a violation of this chapter within five (5) years immediately preceding the date of the application; and

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(D) the applicant or any person having a financial interest required to be disclosed may not have a conviction for a specified criminal act for which:

- (i) less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;
- (ii) less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; or
- (iii) less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve (12) month period.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant.

(b) A license may not be issued unless the authority or law enforcement official has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the authority not later than twenty (20) days after the date of the application.

(c) An applicant who has been convicted of specified criminal activities may not be denied a license based on those convictions once the period required in this section has elapsed.

Sec. 20. (a) To provide proper administration of this chapter, the authority, its authorized representative, or local law enforcement may conduct investigations of persons engaged in the operation of any adult oriented establishment and inspect the license of the operators and establishment for compliance.

(b) Refusal of an operation or establishment to permit inspections is grounds for revocation of a license, suspension of a license, or refusal to issue a license under this chapter.

(c) Not later than ten (10) days after receiving the results of the investigation, the authority shall notify the applicant that the application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of the additional investigation, the authority shall advise the applicant in writing whether the application is granted or denied.

(d) If an additional investigation is held, upon the expiration of the thirtieth day, the applicant may begin operating the business for which the license is sought, unless or until the authority or its authorized representative notifies the applicant of a denial of the application and states the reasons for that denial.

Sec. 21. (a) The authority may enter into any state court having

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proper jurisdiction to:

(1) seek an injunction against an operator or adult oriented establishment not in compliance with this chapter; and

(2) enforce this chapter.

(b) Any violation of an injunction obtained under this section constitutes contempt with a fine of fifty dollars (\$50).

(c) Each day in contempt of an injunction is considered a separate offense.

Sec. 22. (a) The authority shall revoke, suspend, or annul a license for any of the following reasons:

(1) Discovery that false or misleading information or data were given on any application or that material facts were omitted from any application.

(2) The operator or entertainer or any employee of the operator violates this chapter or any rule adopted by the authority. However, in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a license suspension of thirty (30) days if the authority finds that the operator had no actual or constructive knowledge of the violation and could not, by the exercise of due diligence, have had actual or constructive knowledge.

(3) The operator becomes ineligible to obtain a license.

(4) A cost or fee required to be paid by this chapter is not paid.

(5) An alcoholic beverage is served or consumed on the premises of an adult oriented establishment that is not licensed by the Indiana alcoholic beverage commission.

(6) An operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit.

(7) An operator, employee, or entertainer sells, furnishes, gives, or displays or causes to be sold, furnished, given, or displayed to any minor any adult oriented entertainment or adult oriented material.

(8) An operator, employee, or entertainer denies access of law enforcement personnel to any portion of the licensed premises where adult oriented entertainment is permitted or to any portion of the licensed premises where adult oriented material is displayed or sold.

(9) An operator fails to maintain the licensed premises in

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1 compliance with the regulations of the state department of
2 health.

3 (10) An operator, employee, or entertainer is convicted of a
4 specified criminal act, if the violation occurred on the licensed
5 premises.

6 (b) Before revoking or suspending a license or permit, the
7 authority shall give the license holder or permit holder not less
8 than ten (10) and not more than twenty (20) days written notice of
9 the charges against the license holder or permit holder and of the
10 revocation of the license or permit, or of the period the license or
11 permit is to be suspended. The notice must advise the license holder
12 or permit holder of the license holder's or permit holder's right to
13 request a hearing before the authority. If the license holder or
14 permit holder does not request in writing a hearing before the
15 authority within the time stated in the notice, the suspension or
16 revocation is effective beginning the date stated in the notice.

17 (c) If the license holder or permit holder desires to request a
18 hearing before the authority to contest the suspension or
19 revocation, the request must be made in writing to the authority
20 not later than ten (10) days after the license holder's or permit
21 holder's receipt of the notification from the authority. If the license
22 holder or permit holder timely requests a hearing, the effective
23 date of a suspension or hearing is stayed pending the final outcome
24 of judicial proceedings to determine whether the license or permit
25 has been properly revoked or suspended under the law.

26 (d) If the license holder or permit holder timely requests a
27 hearing, a public hearing must be held not later than fifteen (15)
28 days after the authority receives the request. The hearing must be
29 before the authority and must allow the license holder or permit
30 holder to present evidence. The authority shall hear evidence
31 concerning the basis for the suspension or revocation and shall
32 affirm or reverse the suspension or revocation at the conclusion of
33 the hearing.

34 (e) The hearing must be concluded not later than twenty-two
35 (22) days after the license holder's or permit holder's receipt of the
36 notification of the suspension or revocation, unless an extension
37 beyond that time is requested by the license holder or permit
38 holder and granted by the authority.

39 (f) If the authority affirms the suspension or revocation, the
40 attorney for the authority, or the prosecuting attorney, shall
41 institute suit for declaratory judgment in a court of record in the
42 county not later than five (5) days after the date of an affirmation,



1 seeking an immediate judicial determination of whether the license
2 or permit has been properly revoked or suspended under the law.

3 (g) An operator whose license is revoked is not eligible to receive
4 a license for five (5) years after the date of revocation.

5 (h) The applicant is entitled to prompt judicial review of a
6 license suspension or revocation.

7 (i) The authority has the burden of showing that a revocation or
8 suspension of a license under this section is not arbitrary or
9 capricious.

10 Sec. 23. (a) If an application for the issuance of a license or the
11 renewal of a license is denied, the authority shall notify the
12 applicant in writing of the reasons for such action.

13 (b) Notice of denial of an application must advise the applicant
14 of the applicant's right to request a hearing before the authority.
15 If the applicant desires to request a hearing before the authority to
16 contest the denial of an application, the request must be made in
17 writing to the authority not later than ten (10) days after the
18 applicant's receipt of the notification of the denial of the
19 application. If the applicant timely requests a hearing, a public
20 hearing shall be held not later than fifteen (15) days after the
21 authority's receipt of a request. The hearing must be held before
22 the authority. At that time the applicant may present evidence as
23 to why the application should not be denied. The authority shall
24 hear evidence concerning the basis for denial of the application and
25 shall affirm or reverse the denial of an application at the
26 conclusion of the hearing. A hearing shall be concluded not later
27 than twenty-two (22) days after the applicant's receipt of
28 notification of denial of an application, unless an extension beyond
29 that time is requested by the applicant and granted by the
30 authority.

31 (c) If the authority affirms the denial of an application, not later
32 than five (5) days after the date of a denial, the county attorney or
33 the prosecuting attorney shall institute suit for declaratory
34 judgment in a court of record seeking an immediate judicial
35 determination of whether the application has been properly denied
36 under the law.

37 (d) The applicant is entitled to prompt judicial review for the
38 denial of an application for a license or renewal of a license.

39 (e) The authority has the burden of showing that a denial of a
40 license under this section is not arbitrary or capricious.

41 Sec. 24. (a) A license issued under this chapter is valid for one
42 (1) year after the date of issuance, unless revoked before

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1 expiration, and must be renewed before operation is allowed in the
2 following year.

3 (b) Each original application and renewal application shall be
4 accompanied by a fee of two hundred fifty dollars (\$250).

5 (c) An operator desiring to renew a license shall make
6 application to the authority. The application for renewal must be
7 filed not later than sixty (60) days before the license expires. The
8 application for renewal shall be filed in triplicate with and dated
9 by the authority. A copy of the application for renewal shall be
10 distributed promptly by the authority to the local law enforcement
11 official and to the state department of health. The application for
12 renewal must contain information and data, given under oath or
13 affirmation, as may be required by the authority, but not less than
14 the information contained in the original application.

15 (d) In addition to the renewal fee, a late penalty of fifty dollars
16 (\$50) per day shall be assessed against an applicant who files for a
17 renewal less than thirty (30) days before the license expires.

18 (e) If the local law enforcement official is aware of any
19 information bearing on the operator's qualifications, the
20 information must be filed in writing with the authority not later
21 than ten (10) days after the date of the application for renewal.

22 (f) If the application is denied, one-half (1/2) of the fee shall be
23 returned.

24 Sec. 25. (a) The public part of an adult oriented establishment
25 may be open from noon to midnight.

26 (b) The public portion of an adult oriented establishment shall
27 be open to inspection at all reasonable times by the local law
28 enforcement officials, the authority, and the state board of health.

29 (c) The operator shall maintain a register of all employees,
30 showing the:

- 31 (1) name;
- 32 (2) aliases used by the employee, including performance
- 33 names and stage names;
- 34 (3) home address;
- 35 (4) age;
- 36 (5) birth date;
- 37 (6) sex;
- 38 (7) height;
- 39 (8) weight;
- 40 (9) color of hair and eyes;
- 41 (10) telephone number;
- 42 (11) Social Security number;



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- 1 (12) driver's license number;
2 (13) date of employment and termination; and
3 (14) duties;

4 of each employee and other information as may be required by the
5 authority. The information concerning an employee must be
6 maintained in the register on the premises for three (3) years after
7 termination of the employee.

8 (d) At all reasonable times, the operator shall make the register
9 of employees available immediately for inspection by the authority,
10 the local law enforcement official, and the state department of
11 health upon demand.

12 (e) An act or omission by an employee constituting a violation
13 of this chapter is considered the act or omission of the operator if
14 the act or omission occurs either with the authorization,
15 knowledge, or approval of the operator, or as a result of the
16 operator's negligent failure to supervise the employee's conduct.
17 The operator is punishable for an act or omission in the same
18 manner as if the operator committed the act or caused the
19 omission.

20 (f) An operator is responsible for the conduct of all employees
21 while the employees are on the licensed premises, and any act or
22 omission of any employee constituting a violation of this chapter is
23 considered the act or omission of the operator for purposes of
24 determining whether the operator's license may be revoked,
25 suspended, or renewed.

26 (g) An employee of an adult oriented establishment shall neither
27 allow a minor to loiter around or to frequent the adult oriented
28 establishment nor allow a minor to view adult entertainment.

29 (h) Every adult oriented establishment must be physically
30 arranged so that the interior parts of the booths, cubicles, rooms,
31 or stalls where adult entertainment is provided are visible from the
32 common area of the premises. Visibility may not be blocked or
33 obscured by doors, curtains, partitions, drapes, or any other
34 obstruction.

35 (i) The operator of an adult oriented establishment shall provide
36 that any room or area used for the purpose of viewing adult
37 oriented motion pictures or other types of live adult entertainment
38 is readily accessible at all times and is continuously open to view in
39 its entirety.

40 (j) The license issued under this chapter shall be conspicuously
41 displayed in the common area of the premises at all times.

42 (k) A sign must be conspicuously displayed in the common area

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of the premises and must read as follows:

"This Adult Oriented Establishment Is Regulated by IC 24-4-13. Employees are:

- (1) Not permitted to engage in any type of sexual conduct.
- (2) Not permitted to expose their sex organs.
- (3) Not permitted to appear in a state of full nudity."

(l) The license shall be kept by an employee so that it is readily available for display immediately upon request of a customer, the authority, the local law enforcement official, the state board of health, or any person designated by the authority.

(m) Not less than one (1) time per month the operator shall permit the state department of health to inspect the adult oriented establishment. The state department of health shall prepare a report for the authority of all findings.

Sec. 26. (a) An operator, entertainer, or employee of an adult oriented establishment shall not permit:

- (1) sexual intercourse;
- (2) oral copulation;
- (3) anal copulation; or
- (4) any other contact stimulation of the genitalia;

to be performed. This includes the extension of an offer to perform, performance on a patron, performance by employees or patrons, or the allowance of a patron to perform.

(b) An operator, entertainer, or employee of an adult oriented establishment shall not encourage or permit any person upon the premises to touch, caress, or fondle the:

- (1) breasts;
- (2) buttocks;
- (3) anus; or
- (4) genitals;

of any operator, entertainer, or employee.

(c) An entertainer, employee, or customer shall not be permitted to have any physical contact with any other entertainer, employee, or customer on the premises during any performance.

(d) A performance by an entertainer, employee, or customer may only occur upon a stage that is:

- (1) at least eighteen (18) inches above the immediate floor level; and
- (2) removed at least six (6) feet from the next nearest entertainer, employee, and customer.

(e) An employee or entertainer, while on the premises of an adult oriented establishment, shall not:

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- (1) engage in sexual intercourse;
- (2) engage in deviant sexual conduct;
- (3) appear in a state of nudity;
- (4) fondle the employee's or entertainer's own genitals; or
- (5) fondle the genitals of another.

(f) A license holder shall not advertise that the license holder offers sexual stimulation, other than visual stimulation, or sexual gratification.

(g) A license holder shall not display a sign or advertisement in public view that:

- (1) contains a source of illumination;
- (2) uses a picture, the silhouette, or any part of a silhouette of the:
 - (A) bare female breast;
 - (B) human genitals;
 - (C) human pubic region; or
 - (D) human buttocks; or
- (3) exceeds the size and height restrictions determined by the authority.

Sec. 27. (a) A person may not be an entertainer or employee in an adult oriented establishment without a valid permit issued by the authority.

(b) A person desiring to secure a permit shall make application to the authority. The application shall be filed in triplicate with and dated by the authority. A copy of the application shall be distributed promptly by the authority to the local law enforcement official and the state department of health.

(c) The application for a permit shall be upon a form provided by the authority.

(d) An applicant for a permit shall furnish the following information under oath:

- (1) name;
- (2) aliases used by the employee, including performance names and stage names;
- (3) home address;
- (4) written proof that the applicant is at least eighteen (18) years of age;
- (5) birth date;
- (6) sex;
- (7) height;
- (8) weight;
- (9) color of hair and eyes;



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- (10) telephone number;
- (11) Social Security number;
- (12) driver's license number;
- (13) the adult oriented establishment or similar business permit history of the applicant, including whether the person, in previously operating in any city or state under a permit, has had the permit revoked or suspended, the reason for the revocation or suspension of the permit, and the business activity or occupation subject to the suspension or revocation; and
- (14) any conviction for a specified criminal act.

The applicant shall also furnish two (2) color passport photographs at least two (2) inches by two (2) inches of the applicant and provide a statement by the applicant that the applicant is familiar with the provisions of this chapter and is in compliance with them.

(e) Not later than ten (10) days after receiving the results of the investigation conducted by the authority or the local law enforcement official, the authority shall notify the applicant that the applicant's application is granted, denied, or held for further investigation. An additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of additional investigations, the authority shall advise the applicant in writing whether the application is granted or denied.

(f) If an additional investigation is held, upon the expiration of the thirtieth day, the applicant shall be permitted to begin operating the business for which the license is sought, unless or until the authority or its authorized representative notifies the applicant of a denial of the application and states the reasons for that denial.

(g) Failure or refusal of the applicant to give any information relevant to the investigation of the application, the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, the applicant's refusal to submit to or cooperate with any investigation required by this chapter constitutes an admission by the applicant that the applicant is ineligible for a permit and is grounds for denial of the permit by the authority.

Sec. 28. (a) A permit issued under this chapter is valid for one (1) year from the date of issuance, unless revoked before expiration, and must be renewed before an entertainer is allowed to provide entertainment in an adult oriented establishment in the

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1 following calendar year.

2 (b) Each original permit application and renewal application
3 shall be accompanied by a fee of seventy-five dollars (\$75).

4 (c) A person desiring to renew a permit shall make application
5 to the authority. The application for renewal must be filed not later
6 than thirty (30) days before the permit expires. The application for
7 renewal shall be filed in triplicate with and dated by the authority.
8 A copy of the application for renewal shall be distributed promptly
9 by the authority to the local law enforcement official and to the
10 state department of health. The application for renewal must
11 contain information and data, given under oath or affirmation, as
12 may be required by the authority, but not less than the information
13 contained in the original application.

14 (d) In addition to the renewal fee, a late penalty of five dollars
15 (\$5) shall be assessed against the applicant who files for renewal
16 less than thirty (30) days before the license expires.

17 (e) If the application is denied, one-half (1/2) of the fee shall be
18 returned.

19 (f) If the local law enforcement official is aware of any
20 information bearing on the entertainer's qualifications, that
21 information shall be filed in writing with the authority not later
22 than ten (10) days after the date of the application for renewal.

23 (g) An application for renewal of a permit shall be handled,
24 investigated, and approved or denied within the same periods as
25 those established for original permit application.

26 (h) If a permit renewal application is denied, the applicant has
27 all rights of appeal to the authority as set forth for a license issued
28 under this chapter.

29 **Sec. 29. (a) To receive a permit as an entertainer or employee,**
30 **an applicant must meet the following standards:**

31 (1) The applicant must be at least eighteen (18) years of age.

32 (2) The applicant shall not have had a permit revoked within
33 two (2) years immediately preceding the date of the
34 application.

35 (3) The applicant shall not have been convicted of a specified
36 criminal act for which:

37 (A) less than two (2) years have elapsed since the date of
38 conviction if the conviction is for a misdemeanor offense;

39 (B) less than five (5) years have elapsed since the date of
40 conviction if the conviction is for a felony offense; or

41 (C) less than five (5) years have elapsed since the date of
42 conviction for two (2) or more misdemeanor offenses

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1 occurring within any twelve (12) month period.
 2 The fact that a conviction is being appealed has no effect on
 3 disqualification of the applicant.

4 (b) An applicant who has been convicted of specified criminal
 5 activities may not be denied a permit based on those convictions
 6 once the period required in subsection (a)(3) has elapsed.

7 (c) A permit may not be issued until the authority or the local
 8 law enforcement official has investigated the applicant's
 9 qualifications to receive a permit. The results of that investigation
 10 shall be filed in writing with the authority not later than thirty (30)
 11 days after the date of the application.

12 Sec. 30. (a) An operator who violates an adult entertainment
 13 license provision of this chapter shall pay a violation fee of one
 14 thousand dollars (\$1,000) per violation per day of the violation.

15 (b) An operator who violates an adult oriented establishment
 16 license provision of this chapter five (5) times in one (1) year shall
 17 have the license revoked. An operator whose license is revoked may
 18 not reapply for a license for five (5) years.

19 (c) Each violation of this chapter is a separate offense, and any
 20 violation continuing more than one (1) hour shall be considered a
 21 separate offense for each hour of violation.

22 Sec. 31. (a) A person who violates an adult oriented
 23 establishment permit provision of this chapter shall pay a violation
 24 fee of one hundred fifty dollars (\$150) per violation per day of the
 25 violation.

26 (b) A person who violates an adult oriented establishment
 27 permit provision of this chapter five (5) times in one (1) year shall
 28 have the permit revoked. A person whose permit is revoked may
 29 not reapply for a permit for five (5) years.

30 (c) Each violation of this chapter is a separate offense, and any
 31 violation continuing more than one (1) hour shall be considered a
 32 separate offense for each hour of violation.

33 Sec. 32. (a) Fees collected for licenses under section 24 of this
 34 chapter and penalty fees collected under section 30 of this chapter
 35 shall be divided as follows:

36 (1) Thirty-three and thirty-three hundredths percent
 37 (33.33%) to the authority having jurisdiction over the adult
 38 entertainment.

39 (2) Thirty-three and thirty-four hundredths percent (33.34%)
 40 to the local law enforcement agency having jurisdiction over
 41 the adult entertainment.

42 (3) Thirty-three and thirty-three hundredths percent

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1 (33.33%) to the state department of health.

2 (b) Fees collected for permits under section 28 of this chapter
3 and penalty fees collected under section 31 of this chapter shall be
4 divided as follows:

5 (1) Sixty percent (60%) to the authority having jurisdiction
6 over the adult entertainment.

7 (2) Forty percent (40%) to the state department of health.

8 SECTION 3. [EFFECTIVE JULY 1, 2001] Notwithstanding
9 IC 24-4-13, as added by this act, an adult oriented establishment
10 existing and in operation on July 1, 2001, must submit an
11 application for a license not later than December 31, 2001. If a
12 license is not approved, the existing adult oriented establishment
13 shall cease to operate.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 220, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Governmental and Regulatory Affairs.

(Reference is to SB 220 as introduced.)

GARTON, Chairperson

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